

In the Matter of Merchant Mariner's Document No. Z-816729-D2 and
all other Seaman Documents

Issued to: CALIXTO L. GONZALEZ

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1479

CALIXTO L. GONZALEZ

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 9 June 1964, an Examiner of the United States Coast Guard at Philadelphia, Pennsylvania revoked Appellant's seaman documents upon finding him guilty of misconduct. The two specifications found proved allege that while serving as a deck maintenanceman on board the United States SS ALCOA TRADER under authority of the document above described, on 1 June 1964, Appellant wrongfully assaulted a member of the crew, fireman Juan Reyes, with a dangerous weapon, to wit: a knife; and he wrongfully wore a sheath knife.

At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of not guilty to the first specification and guilty to the second one.

The Investigating Officer introduced in evidence the testimony of the alleged victim and three other witnesses as well as an entry in the ship's Official Logbook.

Appellant testified that, after an argument with Reyes, the latter followed Appellant to his room, they grabbed each other, Appellant pulled out his sheath knife and cut Reyes without realizing what he was doing. Appellant added that no blows were struck and he was not hurt, but he had the mistaken impression that Reyes had something in his hand.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and two specifications had been proved.

FINDINGS OF FACT

On 1 June 1964, Appellant was serving as a deck maintenanceman on board the United States SS ALCOA TRADER and acting under

authority of his document while the ship was in the port of Philadelphia, Pennsylvania. Appellant was carrying a sheath knife in his trouser pocket although a Forecastle Card, posted on the ship's bulletin board, included the statement that Title 46 U.S. Code 710 prohibits the wearing of sheath knives on shipboard.

About 1200 on this date, there was an argument between Appellant and fireman Juan Reyes in the messroom. Appellant left and was followed to his room by Reyes. The latter grabbed Appellant and the two seamen scuffled briefly before Appellant pulled out his sheath knife and stabbed Reyes on the upper, left side of his chest. Reyes had no weapon. After being stabbed, he ran from the room. Appellant remained there alone and uninjured. The wound required five stitches.

The Master returned to the ship as soon as he was notified of this incident. Appellant surrendered the knife to the Master and was discharged from service on the ship.

Appellant's prior record consists of a six months' suspension on twelve months' probation in 1956 for assaulting a Master and desertion.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that Reyes was the aggressor throughout. He started the argument, followed Appellant to his room, and grabbed him. Appellant did not intend to stab Reyes but did not have time to think about what he was doing.

Appellant does not know any other trade and needs money to support his family. He has no prior trouble on board ship during eighteen years at sea since his prior record of assaulting a Master occurred ashore.

OPINION

The Examiner accepted Appellant's version of events as set forth in the above findings of fact. However, this is not extended to acceptance of Appellant's statement on appeal that he had no intention of cutting Reyes. Appellant consciously pulled out the sheath knife while he was grappling with Reyes. At such close quarters, there is no apparent purpose that this could serve other than to cut Reyes. But even if Appellant's contention were true, he would be responsible for the probable consequences of his reckless handling of a dangerous weapon. Commandant's Appeal Decision No. 1333.

Although Reyes was the aggressor throughout the incident, there was no justification for the use of a knife by Appellant since he was not in imminent danger of death or serious bodily injury. See Commandant's Appeal Decision Nos. 1212, 1322 and 1409. Appellant admitted no blows were struck and he was not injured by Reyes who is a larger man than Appellant and about ten years older.

Ordinarily, an order of revocation for assault and battery with a dangerous weapon in the close confines of a ship would be affirmed since this is a very serious infraction of the discipline required to promote safety at sea. However, the order in this case will be modified to a suspension for one year because of the mitigating circumstances.

Reyes was the aggressor to the extent that he invaded Appellant's privacy by following him into his own room and physically abusing him there. At this point, after having tried to walk away from the source of the trouble, Appellant contends that he acted without thinking what he was doing. Under the circumstances, there is no doubt that Appellant used excessive force in self-defense when attacked in his room. See Commandant's Appeal Decision No. 1051. Nevertheless, the facts that Reyes was not cut severely when Appellant had the apparent ability to have done so and that Appellant did not pursue Reyes from the room lead to the conclusion that Appellant's conduct was not motivated by a vicious disposition.

The wearing of the sheath knife in violation of 46 U.S. Code 710 and Appellant's prior record of assaulting a Master have been considered. Although it is not significant whether or not Appellant's only prior offense occurred ashore as Appellant contends, the imposition of an entirely probationary suspension indicates the comparatively minor nature of the assault.

ORDER

The order of the Examiner dated at Philadelphia, Pennsylvania, on 9 June 1964, is modified to provide for a suspension of one year.

As MODIFIED, the order is AFFIRMED.

W. D. Shields
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 27th day of November 1964.